

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

OSCAR SANCHEZ, TESMOND
MCDONALD, MARCELO PEREZ, KEITH
BAKER, PAUL WRIGHT, OLIVIA
WASHINGTON, and IDEARE BAILEY, *on
their own and on behalf of a class of similarly
situated persons,*

Petitioners/Plaintiffs,

v.

Civil Action No. 20-cv-832-E

DALLAS COUNTY SHERIFF MARIAN
BROWN, *in her official capacity,* and
DALLAS COUNTY, TEXAS,

Respondents/Defendants.

**DETAINEE PLAINTIFFS' MOTION FOR
REFERRAL TO MAGISTRATE JUDGE FOR SETTLEMENT/MEDIATION**

Under Local Rule 16.3 and Rule 16(c)(2)(H) of the Federal Rules of Civil Procedure, Detainee Plaintiffs move the Court for an order referring the matter of attempting to reach a settlement in this case to a magistrate judge. Counsel for County Jail Defendants has advised that their clients oppose such a referral.

Although the rate of COVID-19 vaccination in the general population now exceeds 50 percent in Texas and 50 percent in Dallas County¹, the rate for people incarcerated in the Dallas County jail remains dismally low—between 12 and 25 percent at last report.² The pandemic

¹ Texas Dep't of State Health Services, https://tabexternal.dshs.texas.gov/t/THD/views/COVID-19VaccineinTexasDashboard/Summary?:origin=card_share_link&:embed=y&:isGuestRedirectFromVizportal=y (last visited July 11, 2021).

² Defendants have not substantiated current overall vaccination rates. They claim without evidence that 1363 or about 25 percent were vaccinated. ECF 269 at 5. The three weeks of data Defendants produced show that there were 2799 "Intake Offerings" and only 143 acceptances—an acceptance rate of just 5 percent. May 21, 2021, Parkland Correctional Health Vaccination Summary. The Sheriff acknowledged during deposition on March 31, 2021, that only 470-500 detainees had been vaccinated as of the end of March 2021. Brown Tr. 49:9-12. Out of a total, transient population of about 5500, these numbers combined represent at most 11.7 percent.

continues to present a significant risk of illness and death to detainees, especially with dangerous virus variants now spreading rapidly. That enormous discrepancy, together with the County Jail Defendants' many elisions or outright falsehoods about the true toll of COVID-19 on jail detainees, have made trial of Detainee Plaintiffs' claims for injunctive relief both appropriate and necessary.

Yet the case should settle. Because of medical and public health advances, this case is in a different posture than at the start of the pandemic. Detainee Plaintiffs have offered terms that would, in collaboration with the County Jail Defendants, sharply increase the rates of virus testing and vaccination acceptance by (1) providing detainees with accurate information and advice from people they trust far more than their jailers and (2) facilitating detainees' ability to access testing and vaccination. Similar efforts in jails and prisons around the country have achieved great success.³

Counsel for the Jail Defendants have so far rebuffed every effort Detainee Plaintiffs have made to accomplish a settlement that implements (1) and (2). Most recently, counsel reportedly took a week or more to discuss with their clients a two-page, five-paragraph Framework Agreement⁴ for settlement they received from counsel for Detainee Plaintiffs after counsel traveled to Houston to meet with them. Despite multiple emails and calls to their offices, the Jail Defendants' counsel have never made a counter-proposal, orally or in writing. Now, with trial less than a month away, they oppose the help of a Magistrate Judge.

Serious deficiencies in the Jail Defendants' response to COVID-19 persist to this day. Secrecy, denial, and deflection continue to characterize their approach and to explain why the

³ See, e.g., 44 percent vaccination rate at Baltimore city jail, <https://www.baltimoresun.com/coronavirus/bs-md-coronavirus-state-inmates-transfer-20210528-xloqlzeewjandlnglbmmei56yu-story.html>, and 66.5 percent rate at California state prisons, Chin, et al., *COVID-19 Vaccine Acceptance in California State Prisons*, New England J. of Medicine (May 12, 2021).

⁴ A copy of the Framework Agreement is attached for reference. A version of the Framework Agreement was provided on April 15, 2021. See ECF 235-1 Ex. F. The following day, counsel for the County Jail Defendants characterized Detainee Plaintiffs' proposal for collaboration as "truly strange". ECF 236 at 8.

evidence at trial will show their deliberate indifference to the health and safety of people in their custody and care. At a cost of \$1 million or more in legal fees and expenses to date,⁵ their refusal to come to terms makes little sense. Although Detainee Plaintiffs are fully prepared to try this case, a resolution reached via a trial without attempting settlement at this point would waste judicial resources and cause still more delay and danger to the proposed class of detainees, who are not adequately protected from the virus and its deadly variants. Detainee Plaintiffs respectfully request the Court to designate a Magistrate Judge to convene and oversee settlement discussions involving the appropriate representatives of the County Jail Defendants.

Date: July 12, 2021

Respectfully Submitted,

/s/ Nancy Rosenbloom

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⁵ Hicks, *With COVID-19 Still Spreading Behind Bars, Dallas County Jails in the Hot Seat*, Dallas Observer, April 14, 2021, <https://www.dallasobserver.com/news/in-dallas-county-jails-incarcerated-people-and-guards-still-getting-covid-19-12005995>.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via the Court's CM/ECG system on all counsel registered with that system, and via email, on July 12, 2021.

/s/ Barry Barnett

Barry Barnett

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that on July 9, 2021, I conferred by email with counsel for the County Jail Defendants about the subject matter of this motion and that counsel advised me that the motion for referral to a Magistrate Judge is opposed.

/s/ Barry Barnett

Barry Barnett

